

**PATENT**

Atty Docket No.: 200300184-1

App. Ser. No.: 10/645,210

**REMARKS**

Favorable reconsideration of this application is respectfully requested in view of the amendments above and the following remarks. Claim 12 has been canceled, and its subject matter has been incorporated into Claim 1. Claim 20 has been added. Claims 1-11 and 13-20 are pending of which claims 1, 18, and 19 are independent.

Claim 12 was rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 2, 8-12, and 19 were rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Jiang et al. (6,901,362).

Claims 3, 4, 6, and 7 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Jiang et al. (6,901,362), in view of Kancovsky et al. (6,665,644).

Claims 13 and 14 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Jiang et al. (6,901,362), in view of Pawlewski et al. (5,583,961).

Claims 15 and 16 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Jiang et al. (6,901,362), in view of Kittler et al. (*On Combining Classifiers*).

Claim 17 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Jiang et al. (6,901,362), in view of Official Notice.

Claim 18 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Jiang et al. (6,901,362), in view of Pawlewski et al. (5,583,961), and further in view of Kittler et al.

These rejections are respectfully traversed for the reasons stated below.

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**Drawings**

The Office Action did not indicate whether drawings as filed on August 21, 2003 are acceptable. It is respectfully requested that the next correspondence from the Patent Office provide such an indication.

**Allowable Subject Matter**

The Examiner's indication of the allowability of claim 5 is appreciated.

**Claim Rejections Under 35 U.S.C. §112, second paragraph**

Claim 12 was rejected because of the phrase "if the frame's fitness datum exceeds a greatest fitness datum." By the foregoing amendment, claim 12 has been canceled and its subject matter has been incorporated in claim 1. Furthermore, the language of such subject matter has been modified to conform with the Examiner's interpretation in the Office Action of now-canceled claim 12. Also by the foregoing amendment, claim 18 has been amended in a similar manner in light of the rejection of claim 12. Accordingly, withdrawal of the rejection under 35 U.S.C. §112, second paragraph, is respectfully requested.

**Claim Rejection Under 35 U.S.C. §102**

The test for determining if a reference anticipates a claim, for purposes of a rejection under 35 U.S.C. § 102, is whether the reference discloses all the elements of the claimed combination, or the mechanical equivalents thereof functioning in substantially the same way to produce substantially the same results. As noted by the Court of Appeals for the Federal Circuit in *Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick Co.*, 221

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USPQ 481, 485 (Fed. Cir. 1984), in evaluating the sufficiency of an anticipation rejection under 35 U.S.C. § 102, the Court stated:

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.

Therefore, if the cited reference does not disclose each and every element of the claimed invention, then the cited reference fails to anticipate the claimed invention and, thus, the claimed invention is distinguishable over the cited reference.

Claims 1, 2, 8-12, and 19 were rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Jiang et al. (6,901,362).

**Claim 1**

Claim 1 has been amended to incorporate the subject matter of claim 12, which has been canceled. Thus, claim 1 now recites, *inter alia*, selecting a frame from the set of frames for meta-data extraction "if the frame's fitness datum exceeds a greatest fitness datum within the set of fitness data minus a predetermined margin."

Initially, the Office Action rejected the claimed selecting step by citing to Jiang et al., col. 7, ll. 18-20, which discusses a first implementation in which a distance between an input Gaussian model (GM) and a trained GM is calculated, and the calculated distance is then compared with a threshold value to classify an audio signal as speech or non-speech. Next, the Office Action rejected the same claimed selecting step with an *alternative* and different second implementation in which a high crossing rate ratio and a low short time energy ratio of frames.

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It is respectfully submitted that the Office Action cannot combine two expressly-stated alternative implementations in Jiang et al. to reject the same claimed features in Claim 1 because such *alternative* implementations were not intended to function together and would not properly function together in Jiang et al. Furthermore, it is respectfully submitted that the aforementioned second implementation in Jiang et al. discloses neither a "greatest fitness datum" nor a "predetermined margin" minus from such greatest fitness datum. Indeed, Jiang et al. refers to two different types of data, the high crossing rate ratio and the low short time energy ratio, and not to the same type of data, i.e., the greatest fitness datum.

Because Jiang et al. fails to disclose each and every element as arranged in claim 1, it is respectfully submitted that Jiang et al. fails to anticipate claim 1 and its dependent claims 2-11, and 13-17. Accordingly, withdrawal of the rejection of these claims and their allowance are respectfully requested.

**Claim 19**

Claim 19 has been amended to incorporate the allowable subject matter of claim 5. Accordingly, it is respectfully submitted that claim 19 is allowable over the references of record for the reasons set forth in the Office Action for the allowability of claim 5.

**Claim Rejections Under 35 U.S.C. §103(a)**

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in MPEP § 706.02(j):

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference

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or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Therefore, if the above-identified criteria are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

Claims 3, 4, 6, 7, and 13-18 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Jiang et al. (6,901,362), in view of various other references and an Official Notice.

Claims 3, 4, 6, 7, and 13-17

Claims 3, 4, 6, 7, and 13-17 are not anticipated by Jiang et al. for the reasons set forth above with regard to claim 1. In addition, the Office Action did not rely on the other references, Kanevsky et al., Pawlewski et al., Kitler et al. and the Official Notice to make up for the deficiencies in Jiang et al.

Accordingly, claims 3, 4, 6, 7, and 13-17 are patentable over the references of record. Withdrawal of the rejection of these claims and their allowance are respectfully requested.

Claim 18

Claim 18 includes the same claimed language in claim 1 as discussed above, i.e., "if the frame's fitness datum exceeds a greatest fitness datum within the set of fitness data minus a predetermined margin." Thus, claim 18 is not anticipated by Jiang et al. as also set forth

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above. In addition, the Office Action did not rely on the other references, Kanevsky et al., Pawlowski et al., Kittler et al. and the Official Notice to make up for the deficiencies in Jiang et al.

Accordingly, claim 18 and its dependent claim 20 are patentable over the references of record. Withdrawal of the rejection of these claims and their allowance are respectfully requested.

**Claim 20**

Claim 20 has been added to include the allowable subject matter of claim 5. Accordingly, it is respectfully submitted that claim 20 is further allowable over the references of record for the reasons set forth in the Office Action for the allowability of claim 5.

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**Conclusion**

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

Respectfully submitted,

Dated: August 27, 2007

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